

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

THOMAS M. MOROUGHAN,

Plaintiff,

-against-

THE COUNTY OF SUFFOLK, SUFFOLK COUNTY  
POLICE DEPARTMENT, SUFFOLK DETECTIVES  
RONALD TAVARES, CHARLES LESER, EUGENE  
GEISSINGER, NICHOLAS FAVATTA and ALFRED  
CICCOTTO, DETECTIVE/SGT. WILLIAM J. LAMB,  
SGT. JACK SMITHERS, SUFFOLK POLICE OFFICERS  
WILLIAM MEANEY, and JESUS FAYA and SUFFOLK  
JOHN DOES 1-10, THE COUNTY OF NASSAU, NASSAU  
COUNTY POLICE DEPARTMENT, SGT. TIMOTHY  
MARINACI, DEPUTY CHIEF OF PATROL JOHN  
HUNTER, INSPECTOR EDMUND HORACE,  
COMMANDING OFFICER DANIEL FLANAGAN,  
DETECTIVE/SGT. JOHN DEMARTINIS, NASSAU  
POLICE OFFICERS ANTHONY D. DILEONARDO,  
EDWARD BIENZ and JOHN DOES 11-20,

Defendants.

CV 12-512 (JFB)(AKT)

**DEFENDANTS'  
DECLARATION IN  
SUPPORT OF  
SUMMARY  
JUDGMENT  
MOTION**

Joanne Filiberti, an attorney admitted to practice in the United States District Court for the Eastern District of New York, declares, pursuant to 28 U.S.C. §1746, under penalty of perjury, as follows:

1. The undersigned is a member of the law firm of Leahey & Johnson, P.C., and hereby represents Defendants County of Nassau, Nassau County Police Department, Sgt. Timothy Marinaci, Inspector Edmund Horace, Commanding Officer Daniel Flanagan, Det./Sgt.

John DeMartinis, and Nassau Police Officer Edward Bienz (“the Defendants”) in the above-captioned matter and as such, is fully familiar with the facts and circumstances set forth herein.

2. This Declaration and attached exhibits are being submitted in support of the Defendants’ motion for summary judgment pursuant to Federal Rule of Civil Procedure 56.

3. Attached hereto as **Exhibit A** is a true and complete copy of Plaintiff’s Notice of Claim, dated May 26, 2011 (see also DE 177, Exhibit H to Plaintiff’s Second Amended Complaint, Bate Pages 234-236).

4. Attached hereto as **Exhibit B** is a true and complete copy of the transcript of the deposition of Defendant Nassau Police Officer Edward Bienz held on December 2, 2015.

5. Attached hereto as **Exhibit C** is a true and complete copy of the transcript of the depositions of Plaintiff Thomas Moroughan held on January 20, 2015 and January 21, 2015.

6. Attached hereto as **Exhibit D** is a true and complete copy of Nassau’s 50-h Statutory Hearing transcript of Plaintiff Thomas Moroughan held on held on August 29, 2011.

7. Attached hereto as **Exhibit E** is a CD containing a true and complete copy of the recordings of the 911 calls made on February 27, 2011, at approximately 1:15 A.M., including the 911 call made by Co-Defendant Anthony Dileonardo (“Track 3”), exchanged on or about September 10, 2012, pursuant to a stipulation to unseal Thomas Moroughan’s file.

8. Attached hereto as **Exhibit F** is a true and complete copy of the transcript of the deposition of Co-Defendant Suffolk Police Officer Channon Rocchio held on June 27, 2014.

9. Attached hereto as **Exhibit G** is a true and complete copy of the transcript of the deposition of Co-Defendant Suffolk Police Officer Enid Nieves held on January 30, 2013.

10. Attached hereto as **Exhibit H** is a true and complete copy of the transcript of the deposition of Co-Defendant Suffolk Sgt. Jack Smithers held on June 27, 2014.

11. Attached hereto as **Exhibit I** is a true and complete copy of the transcript of the deposition of Co-Defendant Suffolk Police Officer William Meaney held on June 26, 2014.

12. Attached hereto as **Exhibit J** is a true and complete copy of the transcript of the deposition of Co-Defendant Suffolk Det. Charles Leser held on November 13, 2013.

13. Attached hereto as **Exhibit K** is a true and complete copy of the transcript of the deposition of Co-Defendant Suffolk Det. Ronald Tavares held on November 21, 2013.

14. Attached hereto as **Exhibit L** is a true and complete copy of the transcript of the deposition of Co-Defendant Nassau Deputy Chief of Patrol John Hunter held on November 19, 2015.

15. Attached hereto as **Exhibit M** is a true and complete copy of the transcript of the deposition of Defendant Nassau Inspector Edmund Horace held on February 21, 2013.

16. Attached hereto as **Exhibit N** is a true and complete copy of the transcript of the deposition of Defendant Nassau Commanding Officer Daniel Flanagan held on February 25, 2013.

17. Attached hereto as **Exhibit O** is a true and complete copy of email correspondence from Defendant Nassau Det./Sgt. John DeMartinis to Nassau Commanding Officer Daniel Flanagan, at 11:35 A.M. (Subject: "Report"), from Officer Flanagan to Co-Defendant Nassau Deputy Chief of Patrol John Hunter, at 11:35 A.M. (Subject: "DRAFT report"), from Officer Flanagan to Chief Hunter, at 11:57 A.M. (Subject: "Draft Report"), and from Officer Flanagan to Chief Hunter at 1:53 P.M. (Subject: "Revised Draft"), dated February 27, 2011, exchanged as Exhibit "A" to Defendants' Response to Plaintiff's Third Demand for the Production of Documents.

18. Attached hereto as **Exhibit P** is a true and complete copy of the transcript of the deposition of Defendant Nassau Det./Sgt. John DeMartinis held on March 12, 2013.

19. Attached hereto as **Exhibit Q** is a true and complete copy of the transcript of the deposition of Defendant Nassau Sgt. Timothy Marinaci held on March 8, 2013.

20. Attached hereto as **Exhibit R** is a true and complete copy of the transcript of the deposition of Defendant Nassau Sgt. Timothy Marinaci held on June 17, 2014.

21. Attached hereto as **Exhibit S** is a true and complete copy of Hearing Officer Inspector Michael G. Studdert's Recommendation, dated March 30, 2014, and then Acting Commissioner of Police Thomas C. Krumpter's Termination Order, dated May 5, 2014.

22. Attached hereto as **Exhibit T** is a true and complete copy of Co-Defendant Anthony DiLeonardo's Article 78 Petition, Index No. 8686/14, seeking to annul the determination made by the Nassau County Police Department (NCPD) and the Nassau County Commissioner of Police Thomas J. Krumpter, dated May 5, 2014, to terminate the Petitioner's employment with the NCPD.

23. Attached hereto as **Exhibit U** is a true and complete copy of Justice Anthony L. Parga's October 22, 2014 Short Form Order, transferring Co-Defendant Anthony DiLeonardo, the underlying Petitioner's, Article 78 Petition, Index No. 8686/14, to the Appellate Division.

24. Attached hereto as **Exhibit V** is a true and complete copy of the Second Department's April 11, 2016 Order *sua sponte* dismissing Co-Defendant, Anthony DiLeonardo's, Article 78 Petition, Index No. 8686/14, for failure to timely perfect.

25. Attached hereto as **Exhibit W** is a true and complete copy of the Police Officer Indemnification Board's Determination, dated March 6, 2012.

26. Attached hereto as **Exhibit X** is a true and complete copy of the Police Officer Indemnification Board's Determination, dated April 15, 2013.

27. Attached hereto as **Exhibit Y** is a true and complete copy of Co-Defendant Anthony DiLeonardo's Article 78 Petition, Index No. 9989/13, seeking to vacate the March 6, 2012 determination and the April 15, 2013 appeal of the Nassau County Police Indemnification Board, which denied the Petitioner a defense and indemnification in a federal civil action commenced by Thomas Moroughan.

28. Attached hereto as **Exhibit Z** is a true and complete copy of Justice R. Bruce Cozzens, Jr.'s May 2, 2014 Short Form Order, dismissing Co-Defendant, Anthony DiLeonardo's, Article 78 Petition, Index No. 9989/13.

29. Attached hereto as **Exhibit AA** is a true and complete copy of the Second Department's March 1, 2017 Order affirming the lower court's denial of Petitioner Anthony DiLeonardo's Article 78 Petition.

30. As set forth more fully in the accompanying Memorandum of Law, the Defendants respectfully submit that an order granting the Defendants' summary judgment pursuant to Federal Rule of Civil Procedure 56 is warranted.

**PLEASE BE ADVISED**, portions of the deposition transcripts have been redacted pursuant to Administrative Order 2004-09, Stipulation and Order of Confidentiality dated June 23, 2015 (DE 191), and Stipulation and Order of Confidentiality dated March 13, 2018 (DE 255).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 27, 2018.

BY: Joanne Filiberti

JOANNE FILIBERTI  
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